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Opposing a Constitutional Amendment in Response to *Hodes & Nauser v. Schmidt*
Special Committee on Federal & State Affairs
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Planned Parenthood Great Plains Votes, the advocacy and political arm of Planned Parenthood in Kansas, opposes any attempt to amend the state constitution to take away women's reproductive rights.

In its 6-1 decision in *Hodes & Nauser, MDs, P.A. v. Schmidt,* the Kansas Supreme Court has found that "Section 1 of the Kansas Constitution Bill of Rights affords protection of the right of personal autonomy, which includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination. This right allows a woman to make her own decisions regarding her body, health, family formation, and family life—decisions that can include whether to continue a pregnancy[1]." We believe that this right should be preserved and that the fundamental right to personal and bodily autonomy is too critical to be stripped from our state constitution, or put to a popular vote.

A constitutional amendment on abortion discriminates against women.

- The court found that the right to personal autonomy allows Kansans to "make their own decisions regarding their bodies, their health, their family formation, and their family life" and that "pregnant women, like men, possess these rights[2]." A constitutional amendment proposes that just one small portion of the right to personal autonomy be taken away—the part that protects pregnant women. To amend our constitution to take away that individual right only for women is blatant discrimination.
- The court stated that, "at the core of the natural rights of liberty and the pursuit of happiness is the right of personal autonomy, which includes the ability to control one's own body, to assert bodily integrity, and to exercise self-determination[3]." It is possible that other types of laws about reproductive health care, medical procedures, and parenting decisions would be protected under the right to personal autonomy in our state constitution, and that such legal protections would be welcome by our residents. To remove one part of this right that applies only to pregnant women is unjust.
- The Kansas Supreme Court conducted a comprehensive analysis of the history of the state constitution and the inclusion of natural rights. In painstaking detail, the court explained how the text includes the natural right to personal autonomy and how this right encompasses decisions about pregnancy. To extract one piece of this right to personal autonomy makes clear the motives behind a proposed constitutional amendment—to discriminate against women and deprive them of their rights.

[1] *Hodes & Nauser, MDs, P.A. v. Schmidt* Case No. 114,153, (Kan. April 26, 2019), *slip op.* at 3
[2] *Id*, *slip op.* at 62
[3] *Id*, *slip op.* at 45

Abortion is a medical procedure and should be regulated as such. No constitutional change is necessary to regulate the practice of abortion.

- Regardless of whether the Kansas Constitution has been found to protect abortion as an individual right, abortion can be regulated as a medical procedure, and health care providers who provide abortion can be regulated just like other licensed health care providers in the state. In other states where this right has been found in the state constitution, health care providers and facilities that provide abortion have continued to be regulated just like other health care providers and institutions.
- In its decision, the Kansas Supreme Court made clear that while the right to personal autonomy is fundamental, it is not absolute, and that the state will be able to regulate abortion using a strict scrutiny standard. "Accordingly, the State is prohibited from restricting this right unless it is doing so to further a compelling government interest and in a way that is narrowly tailored to that interest[4]."
- States have a compelling interest in ensuring that the practice of medicine in the state is safe and legal. Kansas can continue to ensure that the practice of medicine is well regulated to protect the safety of patients across the state, including the provision of abortion.
- Abortion is one of the safest procedures in the United States, with complication rates that are exceedingly low, and mortality rates that are lower than those for colonoscopies, plastic surgery, dental procedures, and adult tonsillectomies[5]—and much lower than that for childbirth. There is no medical reason for regulating health care practitioners who provide abortion differently from those that provide other services that are similar in risk and complexity.
- In some states, even under a strict scrutiny analysis, restrictions on abortion have not been struck down. In Florida, where the state supreme court has recognized the right to abortion under the state constitution's right to privacy, the court rejected a challenge to the state's administrative rules excluding medically necessary abortions from Medicaid coverage. The court held, in part, that the exclusion does not impinge on the right to abortion because it does not impose a barrier or obstacle between the woman and her physician in deciding whether to terminate her pregnancy[6].
- Additionally, when the Tennessee Supreme Court held that the right to an abortion was a fundamental right under the state constitution and thus subject to a strict scrutiny analysis, it maintained that the state "has a compelling interest in maternal health from the beginning of pregnancy[7]."

A constitutional amendment to take away individual rights is extreme and unnecessary.

- It is quite rare that we amend our state constitution and shocking that legislators would propose amending it to remove, rather than protect, individual rights. In fact, for the first time in over a decade, one segment of the population risks being expressly deprived of their fundamental rights under the Kansas Constitution.
- There is no reason to take the extreme step of amending our constitution to take away an individual right that our state courts have found to be protected within the text of the state constitution. In fact, the right to abortion was found to be embedded within a right to personal autonomy, a right that surely Kansans would like to preserve.
- The highest court in Kansas has interpreted the state constitution to protect a fundamental right of those who are pregnant. There is no justification for putting this right for women up for a vote.

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[4] *Hodes & Nauser, MDs, P.A. v. Schmidt* Case No. 114,153, (Kan. April 26, 2019), *slip op.* at 7
[5] Nat'l Acads. of Scis. Eng'g & Med., *The Safety and Quality of Abortion Care in the Uniterd States* 74–75 (2018), https://doi.org/10.17226/24950.
[6] *Renee B. v. Fla. Agency for Health Care Admin*., 790 So. 2d 1036 (Fla. 2001)
[7] *Planned Parenthood of Middle Tenn. v. Sundquist*, 38 S.W.3d 1, 17 (Tenn. 2000), *superseded by constitutional amendment*, Tenn. Const. art. I, § 36.

Amending the Kansas Constitution would allow the Kansas legislature to pass the same extreme anti-abortion bills that have been passed in states like Missouri, Mississippi, and Alabama.

- Since 2011, anti-abortion politicians have quitely passed at least 426 medically unncessary and politially motivated laws, creating a web of laws that push safe and affordable care out of reach, especially for poor women, young people, and people of color.
- In 2019, we have seen a rash of extreme abortion bans sweeping the country, all with one goal in mind—to bring a direct challenge to *Roe v. Wade* to the U.S. Supreme Court, and make abortion inaccessible in this country.
- With the balance of the U.S. Supreme Court now turned against abortion rights, we face the threat of abortion care being dismantled even more aggressively and systematically, and the threat of women and their health care providers being arrested and sent to jail. This is why it is more important than ever for Kansas to ensure that its citizens are protected from extreme politicians who want to ban all abortion.

Kansans deserve the right to make their own personal, private medical decisions without government interference. A constitutional amendment would allow increased government overreach into our private lives.

- Decisions about whether to end a pregnancy are deeply personal, and should be left to a woman in consultation with her health care provider, her family, and her faith—not politicians in Topeka.
- Throughout their pregnancy, a person must be able to make their own decisions with the advice of the health care professional they trust. This amendment could ultimately prevent many Kansans from making those important, personal decisions in consultation with their doctors.

The Kansas Supreme Court reached a thoughtful and well-reasoned conclusion in the *Hodes & Nauser* case that protects every Kansan's right to personal autonomy. It is vital that Kansas legislators realize that they will not be on the right side of history should they allow a vote that could strip rights from Kansas women. Particularly in light of the threats at the federal level, Kansas must not go backwards. We must retain our full state constitutional right to personal autonomy and ensure that people in our state can exercise their rights without government interference.

Nearly one in four women will have an abortion in her lifetime, and every woman's decision about her pregnancy—whether to have an abortion, choose adoption, or parent—should be respected and valued, as well as legally protected.

The *Hodes* decision is ultimately about the equal treatment of women under the law. To quote the majority opinion of Kansas Supreme Court justices in *Hodes & Nauser v. Schmidt,* "Section 1 of the Kansas Constitution Bill of Rights provides: 'All men are possessed of equal and inalienable natural rights, among which are life, liberty, and the pursuit of happiness.' We are now asked: Is this declaration of rights more than an idealized aspiration? And, if so, do the substantive rights include a woman's right to make decisions about her body, including the decision whether to continue her pregnancy? We answer these questions, 'Yes.'[8]"

[8] *Hodes & Nauser, MDs, P.A. v. Schmidt* Case No. 114,153, (Kan. April 26, 2019), *slip op.* at 7